

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 30, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1657

Cir. Ct. No. 2012CV115

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**CRAIG A. DORFLER, INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF ALYSSA N. DORFLER AND
KAREN E. DORFLER,**

PLAINTIFFS-RESPONDENTS,

V.

RYAN G. MILLER AND HUMANA HEALTH PLAN, INC.,

DEFENDANTS,

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Oconto County:
JAY N. CONLEY, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. State Farm Mutual Automobile Insurance Company appeals a summary judgment in favor of Craig Dorfler, individually and as personal representative of the Estate of Alyssa Dorfler, and Karen Dorfler (collectively “the Dorflers”). The circuit court held that State Farm’s “drive-other-car” exclusion was unenforceable and the Dorflers were entitled to stack uninsured motorist coverage for a second vehicle. We conclude this case is controlled by our recent decision in *Belding v. DeMoulin*, 2013 WI App 26, 346 Wis. 2d 160, which was released after the briefing in this case. Accordingly, we affirm.

¶2 On June 26, 2010, Alyssa was a passenger in a Pontiac van driven by her mother, Karen, when an uninsured motorist negligently caused a collision resulting in Alyssa’s death. The State Farm insurance policy that described the van included uninsured motorist (“UM”) coverage with a \$100,000 per person limit of liability. State Farm paid the Dorflers the UM limit for Alyssa’s injury and death under the policy.

¶3 The Dorflers had another State Farm policy that described a vehicle that was not involved in the accident. The Dorflers sought to stack UM benefits under that policy. State Farm moved for summary judgment on the basis that the policy on the second vehicle contained a drive-other-car exclusion, which State Farm argued prevented stacking of UM coverage.

¶4 The circuit court concluded the Dorflers were entitled to judgment as a matter of law. The court determined the drive-other-car exclusion was prohibited by law at the time the State Farm policy was issued, and it therefore

could not be used as a basis to deny the Dorflers coverage. The court subsequently denied a motion for reconsideration.

¶5 Following this ruling, the Dorflers stipulated to dismiss all claims against State Farm on the merits, and with prejudice, except for their claim for UM benefits under the policy that described the non-accident vehicle.¹ The circuit court then entered judgment in favor of the Dorflers for \$100,000 in UM benefits under the policy that described the second vehicle.² State Farm now appeals.

¶6 The accident in the present case occurred in 2010, during the two-year effective period for WIS. STAT. § 632.32(6)(d),³ which allowed the stacking of coverage limits for up to three vehicles owned by the insured. In *Belding*, we held this statute rendered unenforceable a drive-other-car provision that would otherwise be permissible under WIS. STAT. § 632.32(5)(j). *Id.*, ¶¶19-21. We concluded that “the law in place from November 1, 2009, until November 1, 2011, is that ‘drive other car’ exclusions during that period could not prevent insureds from stacking together their UM coverage limits for up to three vehicles owned and insured by the same insured.” *Id.*, ¶21.

¶7 *Belding* controls this case. Under the short-lived law in effect at the time of the accident, State Farm’s drive-other-car exclusion was unenforceable

¹ The parties also stipulated the damages exceeded \$200,000.

² The circuit court’s judgment acknowledged State Farm had previously paid the policy limits pertaining to the accident vehicle.

³ References to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

and the Dorflers were entitled to stack the UM coverage limits for the two insured vehicles. The circuit court's judgment is therefore affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

